

Federal Deposit Insurance Corporation

§ 346.10

(i) A NGEF may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than six months following the end of the NGEF's fiscal year—

(A) A copy of the NGEF's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the NGEF.

(ii) An insured depository institution or affiliate that receives an annual report from a NGEF pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the NGEF within 30 days.

§ 346.8 Release of information under FOIA.

The FDIC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the FDIC's rules regarding Disclosure of Information (12 CFR part 309). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

§ 346.9 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If the FDIC determines that a NGEF has willfully failed to comply in a material way with §§ 346.6 or 346.7, the FDIC will notify the NGEF in writing of that determination and provide the NGEF a period of 90 days (or such longer period as the FDIC finds to be reasonable under the circumstances) to comply.

(2) If the NGEF does not comply within the time period established by the FDIC, the agreement shall thereafter be unenforceable by that NGEF by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The FDIC may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEF by oper-

ation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEF's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the FDIC may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the FDIC will provide written notice and an opportunity to present information to the FDIC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the FDIC under §§ 346.6 or 346.7 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the FDIC to enforce the provisions of any covered agreement.

[66 FR 2099, Jan. 10, 2001, as amended at 66 FR 14071, Mar. 9, 2001]

§ 346.10 Transition provisions.

(a) *Disclosure of covered agreements entered into before the effective date of this part.* The following disclosure requirements apply to covered agreements that were entered into after November 12, 1999, and that terminated before April 1, 2001.

(1) *Disclosure to the public.* Each NGEF and each insured depository institution or affiliate that was a party to the agreement must make the agreement available to the public under § 346.6 until at least April 1, 2002.

(2) *Disclosure to the relevant supervisory agency.* (i) Each NGEF that was